

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

MELISSA CULBERTSON, individually,)
as the next of kin and surviving spouse and as)
the personal representative of the Estate of)
BOB JAMES CULBERTSON, *deceased*)
P.O. Box 545)
3907 Happy Hollow Road)
Coeburn, Virginia 24230)

Plaintiff,)

vs.)

Civil Action No. _____

INDIAN PATH HOSPITAL, Inc.)
d/b/a **INDIAN PATH MEDICAL CENTER**)
% Registered Agent for Service of Process)
C T Corporation System)
800 South Gay Street, Suite 2021)
Knoxville, TN 37929)

and)

INDIAN PATH, LLC)
% Registered Agent for Service of Process)
C T Corporation System)
800 South Gay Street, Suite 2021)
Knoxville, TN 37929)

and)

MOUNTAIN STATES HEALTH)
ALLIANCE, d/b/a Indian Path)
Medical Center)
% Registered Agent for Service of Process)
Mr. Timothy Belisle)
400 North State of Franklin Road)
Johnson City, TN 37604)

and)
)
LUCIEN ABOUD, M.D.)
% Indian Path Hospital)
(where services were performed))
200 Brookside Drive)
Kingsport, TN 37660)
)
and)
)
BETH ANNA MCCURLEY, M.D.)
% IPC - <i>Internal Medicine</i>)
119 Boone Ridge Drive, Suite 201)
Johnson City, TN 37615)
)
and)
)
BRIAN P. DONOVAN, M.D.)
% IPC - <i>Internal Medicine</i>)
119 Boone Ridge Drive, Suite 201)
Johnson City, TN 37615)
)
)
Defendants.)

COMPLAINT

Comes the Plaintiff, **MELISSA CULBERTSON**, individually, as the next of kin and surviving spouse and as the personal representative of the Estate of **BOB JAMES CULBERTSON**, by her attorneys and sues the Defendants for damages and for cause of action, would show as follows:

I. Parties

1. **Bob James Culbertson**, *deceased*, was a citizen and resident of Wise County, Virginia, whose address was 3905 Happy Hollow Road, P.O. Box 545, Coeburn, Virginia 24230.

2. **Melissa Culbertson** is the surviving spouse of Bob James Culbertson, *deceased*, has qualified as the personal representative of his Estate in Virginia, a copy of the Qualification is attached hereto as **Exhibit A** and is a citizen and resident of Wise County, Virginia, whose address is P.O. Box 545, Coeburn, Virginia 24230.
3. Plaintiff, **Melissa Culbertson**, bases this cause upon laws of the United States and brings this action as the surviving spouse and next of kin and personal representative of the estate of her husband, Bob James Culbertson, *deceased*, as further authorized by *Tennessee Code Annotated § 20-5-106 et seq.*, the Tennessee wrongful death statute.
4. Plaintiff, **Melissa Culbertson**, bases this cause upon laws of the United States and brings this action as the surviving spouse and next of kin and personal representative of the estate of her husband, Bob James Culbertson, *deceased*, as further authorized by *Tennessee Code Annotated § 29-26-101 et seq.*, the Tennessee medical malpractice statute.
5. **INDIAN PATH HOSPITAL, Inc.** is a Tennessee Corporation with a Principal Address of One Park Plaza, Nashville, Tennessee 37203 and owns or operates Indian Path Medical Center located at 200 Brookside Drive, Kingsport, TN 37660. Indian Path Hospital, Inc. may be served with process through its designated agent for service of process % Registered Agent for Service of Process, C T Corporation System, 800 South Gay Street, Suite 2021, Knoxville, TN 37929.
6. **INDIAN PATH, LLC**, Defendant, is a Tennessee Limited Liability Company with a Principal Address of One Park Plaza, Nashville, Tennessee 37203 and owns or operates Indian Path Medical Center, a hospital facility located at 200 Brookside

Drive, Kingsport, TN 37660. Indian Path, LLC may be served with process through its designated agent for service of process % Registered Agent for Service of Process, C T Corporation System, 800 South Gay Street, Suite 2021, Knoxville, TN 37929.

7. **MOUNTAIN STATES HEALTH ALLIANCE** is a Tennessee Corporation with its primary place of business located at 400 North State of Franklin Road, Johnson City, Washington County, TN 37604 and owns or operates Indian Path Medical Center. Mountain States Health Alliance may be served with process through its designated agent for service of process % Registered Agent for Service of Process, Mr. Timothy Belisle, 400 North State of Franklin Road, Johnson City, TN 37604.
8. **LUCIEN ABOUD, M.D.**, Defendant, is a physician licensed to practice medicine in Tennessee and may be served with process c/o **Indian Path Medical Center (where services were performed)**, 200 Brookside Drive, Kingsport, TN 37660.
9. **BETH ANNA MCCURLEY, M.D.**, Defendant, is a physician licensed to practice medicine in Tennessee and may be served with process at % IPC, 119 Boone Ridge Drive, Suite 201, Johnson City, TN 37615.
10. **BRIAN P. DONOVAN, M.D.**, Defendant, is a physician licensed to practice medicine in Tennessee and may be served with process at % IPC 119 Boone Ridge Drive, Suite 201, Johnson City, TN 37615.
11. Jurisdiction of this Court is proper pursuant to 28 U.S.C. § 1332. Plaintiff asserts that her claim and damages are in excess of \$75,000.
12. Plaintiff avers that, through undersigned counsel, Plaintiff has complied with the provisions of Tenn. Code Ann. § 29-26-121(a) by having sent on June 6, 2011 and

June 15, 2011, to Defendants as set forth in the Affidavit of **Bridgette Ramsey** attached hereto as **Exhibit B** and incorporated by reference pursuant to Tenn. R. Civ. P. 10.04. a Notice of Claim letter (Exhibit 1 to Exhibit B), evidenced by the U. S. Postal Service Certified Mail Receipt and/or Certificate of Mailing establishing that the Registered Mail letters were sent to each Defendant on June 6, 2011 (Exhibit 2 to Exhibit B) and on June 15, 2011 (Exhibit 3 to Exhibit B), together with a HIPPA compliant authorization permitting the Defendant(s) to obtain relevant medical records of the Plaintiff's Decedent (Exhibit 4 to Exhibit B). The Notices of Claim, and all attachments thereto, were delivered by the U. S. Postal Service to defendants (Exhibit 5 to Exhibit B). As is confirmed by Exhibit B, and the exhibits thereto, the Plaintiff avers that the requirements of Tenn. Code Ann. § 29-26-121(a) have been satisfied as to all Defendants.

13. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent and/or employee or employer of each of the remaining Defendants, and in doing the things hereinafter alleged, was or were acting within the scope of such agency and/or employment, and with the permission and consent of other co-defendants and are thus vicariously liable for the acts of each other. The individual defendants were, on information and belief, employees of one or more of the corporate defendants.

II. Certificate of Good Faith

14. The Plaintiff avers that, in accordance with the provisions of Tenn. Code Ann. § 29-26-122, Plaintiff's counsel has consulted with an expert who has provided a signed

written statement confirming that, upon information and belief, in conformity with the provisions of Tenn. Code Ann. § 29-26-115, he is qualified and competent to express an expert opinion in this case and that there is a good faith basis to maintain the instant action against the Defendants consistent with the requirements of Tenn. Code Ann. § 29-26-115. Attached as **Exhibit C** is the Certificate of Good Faith, Medical Malpractice Case, Plaintiff's Form.

III. Nature of Action

15. This is an action for wrongful death and medical malpractice brought against the Defendants arising out of the negligent care and treatment of Plaintiff's decedent by Defendants from June 6, 2010 to June 15, 2010 at Indian Path Medical Center in Kingsport, Sullivan County, Tennessee.

IV. Relationship of the Parties as Joint Venturers

16. Indian Path Hospital, Inc. and Mountain States Health Alliance are Tennessee corporations which own or operate Indian Path Medial Center located in Kingsport, Sullivan County, Tennessee. One or both of these Defendants provide hospital and hospitalist care and treatment and one or both maintains and retains such control and power over the physicians practicing in said hospital as to in law make them its employees or agents, if they are not direct employees.
17. Alternatively, Indian Path Hospital, Inc., Indian Path, LLC and Mountain States Health Alliance by and through their various contracts or arrangements, were engaged in a joint venture for the common purpose of maintaining and operating

Indian Path Medical Center. As joint venturers, the negligence of one member of the venture is imputed to the other members of the venture.

18. The individual Defendants, Dr. Lucien Abboud, Dr. Beth Anna McCurley and Dr. Brian Donovan, are alleged to be agents and employees of one or more of the corporate Defendants of the joint venture and are likewise part of same and liable as joint venturers with the other members thereof. In short, Plaintiff avers that all of the Defendants are jointly liable as joint venturers to the Plaintiff for the matters and wrongs hereinafter set forth or are vicariously liable under the *Doctrine of Respondeat Superior*.

V. Medical Malpractice and Negligence

19. On June 6, 2010, Plaintiff's decedent presented to Norton Community Hospital in Norton, Virginia where he was diagnosed with kidney stones and was transferred/referred to Indian Path Medical Center in Kingsport, Sullivan County, Tennessee for a higher level of care.
20. On June 6, 2010, Mr. Culbertson was hospitalized at Indian Path Medical Center where he came under the care and treatment of the individual Defendants, the hospital nurses and other medical providers and was being treated for two (2) kidney stones. On June 8, 2010, at approximately 0252 hours, Plaintiff noticed that Mr. Culbertson was not breathing and appeared to be dead. She ran to the nurses' station for help and despite the fact that Mr. Culbertson was supposed to be on telemetry, no alarm was sounded until Plaintiff's call for help. As a result of the acts of

negligence set forth below, Mr. Culbertson suffered an anoxic brain injury from which he died on June 15, 2010.

21. Plaintiff avers that the Defendants, through their agents, employees and representatives, to include the corporate Defendants and Defendants Abboud, McCurley, and Donovan, were negligent and violated the recognized standards of acceptable professional practice required of hospitals, physicians and nursing and hospital personnel practicing in Sullivan County, Tennessee or similar communities in the care and treatment of Bob James Culbertson as follows:

- a. Failing to properly evaluate Plaintiff's complaints; and,
- b. Failing to take an adequate history, including a history of obstructive sleep apnea, a previous partial lobectomy and chronic obstructive pulmonary disease (COPD);
- c. Administering excessive and improper amounts of intravenous narcotic medication in light of Mr. Culbertson's medical history and condition;
- d. Failing to properly diagnose and treat Plaintiff's emergent need for surgery;
- e. Failing to adequately monitor a patient on intravenous narcotics; and,
- f. Failing to have adequate protocols in place regarding narcotic overdose and Narcan administration; and,
- g. Failed to meet the acceptable standard of medical care by failing to diagnose and recognize the presence of obstructive sleep apnea in a patient with a history of partial lobectomy and COPD;

- h. Failed to modify the narcotic administration taking into account the patient's sleep apnea;
- i. Failing to properly provide appropriate treatment for the sleep apnea and appropriate monitoring for a patient with sleep apnea who required potent pain medication;
- j. Failed to repeat the dose of the very short acting narcotic antagonist Narcan, thus allowing the patient to revert back into a state of narcotic overdose; and,
- k. Failed to provide adequate policies and procedures to deal with narcotic administration and use of narcotic antagonists (i.e.Narcan) to treat overdose.

The respiratory depression of the powerful narcotics combined with the condition of sleep apnea deprived the patient's brain of oxygen producing a fatal anoxic injury to the brain. If the acceptable standard of medical care had been met by the defendants, the patient's death would have been prevented and he would have fully recovered.

22. Indian Path Hospital, Inc. d/b/a Indian Path Medical Center, Indian Path, LLC, Mountain States Health Alliance, Dr. Abboud, Dr. McCurley, and Dr. Donovan, as joint venturers, are jointly liable for the wrongful death of Bob James Culbertson which resulted from the excessive administration of narcotic medication causing his anoxic brain injury and death.

VI. Causation and Damages

23. As a direct and proximate result of the aforesaid medical malpractice and negligence, violations of the applicable standards of care, and departures from the standards of acceptable professional practice and violation of the hospital's policies and procedures, Plaintiff's decedent suffered death following a period of seven (7) days during which he suffered *status epilepticus*, a devastating condition where Mr. Culbertson was in a constant state of seizure and injuries which otherwise would not have occurred but for Defendants' deviations from the standard of care. Mrs. Culbertson sues for Mr. Culbertson's suffering, funeral expenses, the loss of his business and future earning capacity and the pecuniary value of his life including the value of his services, the loss of Mrs. Culbertson's interest in his income, the loss of spousal consortium, loss of parental consortium by his surviving child, as well as all other damages allowed by the law comprising the total pecuniary value of Mr. Culbertson's life. These damages are sought pursuant to the Tennessee Wrongful Death Act for the benefit of Plaintiff and his surviving son, Bob James Culbertson, II.

WHEREFORE, Melissa Culbertson, as the surviving spouse and personal representative of the Estate of Bob James Culbertson, deceased (on behalf of herself and Bob James Culbertson, II., the lone surviving child of Bob James Culbertson), sues the Defendants for compensatory damages for the wrongful death of Mr. Culbertson in an amount deemed fair and reasonable by the jury but not to exceed Five Million Dollars (\$5,000,000.00) and the costs of this cause. Mrs. Culbertson demands a jury trial.

Respectfully submitted this 23rd day of September, 2011.

A handwritten signature in black ink, appearing to read 'K.D. Stewart', with a long horizontal line extending to the right.

Keith D. Stewart, BPR #17574
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